No. 86-1595

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JUNE WOMBLE,
Petitioner,

vs.

SEABOARD SYSTEM RAILROAD,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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and

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QUESTION PRESENTED

Whether the doctrine of exhaustion of administrative remedies for employment dispute resolution under the Railway Labor Act (45 U.S.C. §151) applies to non-union rail employees, and whether Petitioner has raised this issue to the level of a substantial and important question worthy of consideration by this court.

RULE 28.1 LIST

Respondent Seaboard System Railroad, Inc. is now denominated as CSX Transportation, Inc., which in turn is a wholly-owned subsidiary of CSX, Inc.

Subsidiaries and affiliates of CSX, Inc. are as follows:

1. CSX Acquisition Corporation, a wholly-owned subsidiary of CSX, Inc., has an interest in Sea-Land Corporation.

2. CSX Resources, Inc., a wholly-owned subsidiary of CSX, Inc., has partial interests in:

   a. Eastern Hardwoods, Inc.

   b. Mid-Allegheny Corporation. Mid-Allegheny has an interest in New Gauley Coal Corp., which in turn has an interest in Littleton Fuel Company.

3. Chesapeake and Ohio Railway Company.

4. CSX Transportation, Inc. (formerly Seaboard System Railroad) has a partial interest in the following:
   a. Augusta and Summerville Railroad Company;
   b. Beaver Street Tower Company;
   c. Central Transfer Railway and Storage Company;
   d. Nashville & Decatur Railroad Company;
   e. North Charleston Transfer Company;
   f. Paducah & Illinois Railroad Company;
   g. Winston-Salem Southbound Railway Company;
   h. Woodstock & Blockton Railway Company.

5. CSX, Inc. and various of its wholly-owned subsidiaries have a partial interest in Fruit Growers Express Company.

6. Various subsidiaries of CSX, Inc. have a partial interest in Richmond-Washington Company, which in turn has a partial interest in the Richmond, Fredericksburg and Potomac Railroad Company.

7. Texas Gas Transmission Corporation.

8. American Commercial Lines, Inc.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Seaboard System Railroad respectfully requests that this Court deny the petition for writ of certiorari submitted by June Womble seeking review of the decision of the Court of Appeals for the Eleventh Circuit reported at 804 F.2d 635 (11th Cir. 1986).

STATEMENT OF THE CASE

Respondent accepts the Statement of the Case submitted by the Petitioner.

SUMMARY OF ARGUMENT

Petitioner has presented no special or important reasons why writ of certiorari should be granted.

The doctrine of exhaustion of administrative remedies for resolution of employee disputes under the Railway Labor Act has been held by Courts below to apply to non-union rail employees. The Courts below applied the direction of this Court in *Andrews v. Louisville and Nashville R.R.*, 406 U.S. 320 (1972) to Petitioner's claim by dismissing her cause without prejudice thereby permitting her to pursue an administrative remedy.

ARGUMENT

The doctrine of exhaustion of administrative remedies for employment dispute resolution under the Railway Labor Act applies to non-union rail employees, and Petitioner has not raised the issue to the level of a special and important question worthy of consideration by this Court.

This Court should not exercise its judicial discretion, since there are no special and important reasons for doing so. The Petitioner has ignored Rule 17 of the Rules of the Supreme Court of the United States. Petitioner has ignored Rule 17.1 and the character of reasons as set forth in 17.1(a) and (c). Petitioner has set forth neither the substance of Rule

17 nor the spirit of Rule 17. The Petitioner neither supports nor attempts to support her arguments by any special and important reasons to grant a review on writ of certiorari.

The Court of Appeals relied on *Andrews v. Louisville and Nashville R.R.*, 406 U.S. 320 (1972), *Thomas v. New York, Chicago and St. Louis R.R.*, 185 F.2d 614 (6th Cir. 1950); and *Rader v. United Transportation Union*, 718 F2d 1012 (11th Cir. 1983). There is no conflict among Circuits, and the application of the law by the Court of Appeals for the Eleventh Circuit is squarely within the holdings of this Court.

We respectfully submit that certiorari should not be granted except where the case involves principles of importance to the public or where there is a real and embarrassing conflict of opinions between the Courts.

Petitioner has presented to this Court but a few cases, all of which have been rejected by all Courts considering this cause. The cases were submitted to the District Court and were rejected. The same cases were submitted to the Court of Appeals for the Eleventh Circuit on initial submission, as well as rehearing, and were rejected. The same inapplicable cases do not establish a basis for review herein.

Two of Petitioner's cases are over forty years old and dealt with totally unrelated issues. One of Petitioner's other cases dealt with the dichotomy of the Federal Employer's Liability Act, 45 U.S.C. §51 *et seq.* and the Railway Labor Act 45 U.S.C. §151 *et seq.* The remaining case involved a Defendant that no longer existed, so that the Railway Labor Act could not reach it.

Petitioner's cases are as follows:

A. *Williams v. Jacksonville Terminal*, 315 U.S. 386 (1942). At issue was whether a Railroad Company operating

a terminal would be allowed to credit "tips" to a minimum hourly wage of twenty-five cents per hour where no agreement existed. The Court held that "tips" were to be considered as part of wages pursuant to the Fair Labor Standards Act, 29 U.S.C. §201 *et seq*. This case was *not* a discharge or benefit case but mainly required application of rules to minimum wage payments. Petitioner's continual citing of this case, completely out of context, does not change the holding or circumstances of such a case.

B. *Elgin, Joliett Eastern Ry. v. Burley*, 325 U.S. 711 (1945) *affirmed* 327 U.S. 661 (1964). The issue before the Court was so perplexing that the Court was closely divided and a rehearing was necessary (not cited by Petitioner herein). The issue was basically whether a collective bargaining agent had authority to compromise the monetary claims of its members to the exclusion of the individual union members. This perplexing matter had no material circumstances relative to our case.

C. *Lancaster v. Norfolk & Western Ry.*, 773 F.2d 807 (7th Cir. 1985), *cert. pending* No. 85-1702, involved a head on collision, between the Federal Employers Liability Act, 45 U.S.C. §51-60 and the Railway Labor Act, 45 U.S.C. §151 *et seq*., in which the FELA prevailed. The Court described the case as "issues of labor and tort law in a bizarre factual setting."

D. *Gorrill v. Icelandair/Flugleidir*, 761 F.2d 847 (2d Cir. 1985). However, Petitioner, fails to recognize that the District Court and the Court of Appeals observed that the Defendant Icelandair was "nonexistent for the purpose of the Railway Labor Act jurisdiction or otherwise."

Thus, Petitioner has shown no conflict of any nature. The position of Petitioner is but a chimerical interlude that is neither important nor relevant.[1]

All authority on the issue of dispute resolution emanating from this Court begins with the cornerstone case of *Andrews v. Louisville and Nashville R.R.*, 406 U.S. 320 (1972). Petitioner seeks to distinguish her case on the narrow basis that the word "employee" within the meaning of the Railway Labor Act only applies to members of a union. As a result, Petitioner contends that she is immune from the requirement that she conduct herself as others by exhausting administrative remedies.

Thus, the Petitioner has tried to elude one of the primary purposes and applications of the Railway Labor Act by contending that it has a narrow focus only upon employees represented by labor organizations. But, neither Court below has adopted this unfounded position.

The Petitioner would relegate dispute resolutions of individual employee grievances or disputes to the courts even where an obvious and readily available specific arbitral remedy exists. Petitioner ignores the obvious dictates of *Andrews* and its progeny wherein the Courts have uniformly conceived their role as one of extremely limited judicial review *following* the rendering of awards by arbitrators.

The Petitioner produced no citation of a case exemplifying the court remedy she now seeks. Indeed, the best Petitioner can accomplish in the face of this challenge is to completely misrepresent the case of *Thomas v. New York, Chicago & St. Louis R.R.*, 185 F.2d 614 (6th Cir. 1950), by asserting that the issue of exhaustion of administrative

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[1] Cases involving Interstate Commerce Commission's prescribed labor protection conditions have treated claimants' non-union status as of no consequence. See, *Walsh v. U.S.*, 723 F.2d 570 (7th Cir. 1983), *reh'g denied id*, and *Hoffman v. Missouri Pacific R.R.*, 806 F.2d 800 (8th Cir. 1986).

remedies was "not actually litigated by the parties." In *Thomas*, a non-union railroad employee did proceed before the National Railroad Adjustment Board because that arbitral body did have jurisdiction to hear his grievance, such authority found by the Court of Appeals to be lodged in that Board:

> The adjustment Board clearly had explicit authority to consider and rule upon Appellant's grievance. 45 U.S.C.A., § 152 and 153, give the Board jurisdiction over disputes growing out of 'grievances or out of the interpretation or application of agreements.' *This enactment clearly includes within the term 'grievance' a dispute between the individual employee and the carrier. Cf. Elgin, Joliett & Eastern Ry. v. Burley*, 325 U.S. 711 (1945). *This is true although he is not a member of the union.* (Emphasis supplied)

Petitioner has *not*:

A. Pointed out either generally or precisely how the ruling in this cause is contrary to or in conflict with other Courts of Appeal, or

B. Pointed out how the ruling in this cause is in conflict with this Honorable Court, or

C. Pointed out where there are any special and important reasons for this issue to be a basis for review, or

D. Pointed out where the principle involved is of importance to the public, or where there is a real or embarrassing conflict of opinions between the Courts of Appeals.

In the present setting, the District Court dismissed the case *without prejudice*, stating that Petitioner was entitled to pursue her administrative remedies as provided by the Railway Labor Act. This holding was squarely predicated

upon *Andrews v. Louisville and Nashville R.R.*, 406 U.S. 320 (1972). Petitioner did not assert in the Courts below that it would be futile to pursue the Railway Labor Act administrative remedies or that such remedies would be inadequate.[2] (Appendix to Petitioner's Brief, page 8, holding of United States District Judge). Dispute resolution for Railroad employees is under the Railway Labor Act and it must remain that way. Denial of this writ will allow it to so remain.

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[2] As the trial judge noted, "Plaintiff does not assert that it would be futile to pursue the RLA administrative remedy or that such remedy would be inadequate." (Pet. App. 8-9).

CONCLUSION

Petitioner has failed to show that the decision of the Eleventh Circuit presents a novel or important issue requiring the attention of this Honorable Court. The petition should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to JOHN F. MacLENNAN, Kattman, Eshelman & MacLennan, P.A., 1920 San Marco Boulevard, Jacksonville, Florida 32207 by United State Mail this 24 day of April, 1987.

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